

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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W6c

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Hearing item number: W6c

APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number.....**A-3-MCO-05-052, Jana Weston, et al**
Applicants.....Jana Weston; Kelly Short Lloyd, Agent
Appellant.....Commissioners Wan and Shallenberger
Local governmentMonterey County
Local decisionApproved with conditions on May 26, 2005
Project locationAPNs 420-011-002, 420-171-032; located west of Highway One, southerly of Post Ranch Inn, Big Sur Coast Area, Monterey County.
Project description.....PLN040180 – Lot line adjustment to reconfigure four existing lots of record of approximately 0.15, 23, 34, and 75 acres each in/ adjacent to Coastlands into four lots of approximately 18, 27, 45 and 45 acres each; variance to allow two resulting lots that do not meet the minimum lot size of 40 acres.
File documents.....Monterey County Certified Local Coastal Program (LCP), including Big Sur Coast Land Use Plan (LUP) and Coastal Implementation Plan (CIP); Monterey County Coastal Development Permit PLN040180.
Staff recommendation ...**Substantial Issue**

I. Recommended Findings and Declarations for Substantial Issue:

Monterey County's approval of a Coastal Development Permit for a lot line adjustment to reconfigure four existing lots of record of approximately 0.15, 23, 34, and 75 acres each in and adjacent to Coastlands into four lots of approximately 18, 27, 45 and 45 acres each, and a variance to allow two resulting lots that do not meet the minimum lot size of 40 acres has been appealed to the Coastal Commission on the basis that: (1) the lot line adjustment creates two parcels less than 40 acres in size, which raises a substantial issue of consistency with LCP policies that require 40-acre minimum parcel size; (2) the adjustment will increase the density of residential development beyond that which is allowed by the LCP; (3) the increase in development density resulting from the lot line adjustment will have cumulative adverse impacts on coastal access and recreation, water supplies, and the unique coastal resources of the Big Sur coast. Project location and plans are attached as Exhibit s A-C. Photos of the



California Coastal Commission
August 2005 Meeting in Costa Mesa
 Staff: K. Cuffe Approved by:

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site are included in Exhibits D and E. The County's Final Local Action Notice (FLAN), approving the project (Minor Subdivision Committee Resolution Number 05014), is attached to the report as Exhibit H. The submitted reasons for appeal are attached to this report as Exhibit I.

These contentions are valid as discussed below, and, thus, the Commission finds that the appeal raises a substantial issue regarding the project's conformance to the Monterey County certified LCP.

The project area is governed by the Big Sur LUP and is within the LCP's Rural Density Residential (RDR) land use designation and Watershed and Scenic Conservation (WSC) zoning district. Sections 20.17.060.B and 20.145.140.A.8 of the LCP's Coastal Implementation Plan (CIP) establish a forty acre minimum parcel size for such areas. In this case, there is no way the density standard of 40-acre minimum parcel size could be met, since a minimum of 160 acres is necessary to have four buildable lots. With a combined total area for the four lots (which currently measure 0.15, 23, 34, and 75 acres each) of 132.15 acres, conformance with the 40-acre minimum can not be accomplished by this lot line adjustment. While the proposed lot line adjustment would reduce the number of undersized lots from three to two, it still results in establishing two lots that are non-conforming with regards to minimum lot size. However, conformance with the 40-acre density standard could be achieved by merging the four parcels into three legally conforming parcels, as provided for by the Big Sur LUP Policy 5.4.3.G¹, provided there is substantial evidence demonstrating that there are at least three currently buildable lots. The lot line adjustment approved by the County thus raises a substantial issue of consistency with the minimum lot size requirements, as well as with Big Sur LUP Policy 5.4.3.G and CIP Section 20.145.140.A.1², because the project creates two new parcels under 40 acres in size. That the project was granted a variance because it did not meet the minimum lot size is evidence that the project does not meet "all other LCP requirements," as required by CIP Section 20.145.140.A.1. In addition, the County's findings for approval of a variance to LCP minimum lot size requirements are not accompanied by substantial evidence to establish consistency with LCP standards for variances (CIP Section 20.78).

With regards to development potential of the existing parcels, CIP Section 20.145.140.A.5 states that development of a parcel shall be limited to density, land use, and site development standards specific to that parcel's land use designation. Furthermore, CIP Section 20.145.140.A.15 states that existing parcels of record are considered to be buildable provided that: a) all resource protection policies of the land use plan and standards of the ordinance can be met; b) there is adequate building area on less than 30% slopes; and, c) that all other provisions of the Coastal Implementation Plan can be fully met. (Ref.

¹ Big Sur LUP Policy 5.4.3.G – Specific Policies for Rural Residential land uses – Reconstitution of parcels or mergers may be required for any area of the coast where past land divisions have resulted in parcels being unusable under current standards or where cumulative impacts on coastal resources require limitations on further development. Parcel mergers shall be based on the following criteria: a) the minimum buildable parcel shall be one acre; b) each parcel must contain a suitable septic and drainfield location on slopes less than 30%, and must be able to meet regional Water Quality and County stream setback and septic system requirements; and c) each parcel must conform to all Plan policies for residential development on existing parcels.

² Section 20.145.140.A.1 of the LCP's Implementation Plan (CIP) requires the development to conform and be consistent with policies of the Big Sur Land Use Plan (BSLUP)



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LUP Policy 5.4.2.5). Pursuant to these standards, two of the four existing parcels (the 0.15-acre Lot 3 and 26-acre Lot 4) should not be considered buildable with residential uses for the following reasons:

- **Wastewater Treatment.** Lot 3 (0.15 acres) and Lot 4 (26 acres) do not meet the on-site wastewater treatment standards established by CIP Section 20.145.140.A.13. Specifically lot 3 does not conform to the 1-acre minimum, while Lot 4 does not have adequate area outside of 30% slopes to accommodate on-site treatment.
- **Slopes.** Lot 4 is too steep for residential and associated roadway development. With an average slope of approximately 60%, and very little, if any, portion of the property containing slopes less than 30%, it would be impossible to construct a residence and access road consistent with CIP Section 20.145.140.A.4, which limits development to slopes of under 30%.
- **Hazards.** Lots 3 and 4 are within High Hazard Areas due to their proximity to a fault scarp, and in the case of Lot 4, the presence of a large, active landslide (see Exhibits E through G). Big Sur LUP Policy 3.7.1 requires that land use and development be carefully regulated through the best available planning practices in order to minimize risk to life and property and damage to the natural environment. Policy 3.7.2.3 states that areas of a parcel which are subject to high hazards shall generally be considered unsuitable for development, and requires an environmental or geotechnical report prior to County review of development. The County's approval of the Lot Line Adjustment does not contain adequate information regarding hazards at the project site, and, as a result, does not conform to the requirements of Policies 3.7.1 and 3.7.2.3, nor establishes that Lots 3 and 4 are buildable under their current configuration.
- **Water Supplies.** The County's approval of the lot line adjustment does not contain evidence of an adequate water supply to support future residential development of Lots 3 and 4, and thereby does not address the requirements of Big Sur LUP Policy 3.4.2.3, which limits development to prevent overuse of limited water supplies, protect the public's health and safety, and preserve the natural value of streams and watersheds.

To summarize, the increase in residential development enabled by the adjustment conflicts with Big Sur LUP Policy 5.4.3.H.4, which states that "lot line adjustments are encouraged when no new developable lots are created and when plan policies are better met by this action" (emphasis added). In other words, Policy 5.4.3.H.4 encourages reconfiguration of buildable parcels so that coastal resources can be better protected, and discourages adjustments that convert unbuildable parcels into buildable parcels. The County approved lot line adjustment and variance raises a substantial issue of consistency with Policy 5.4.3.H.4 because it converts sub-standard parcels that cannot be developed with residential uses into buildable parcels, and sets a precedent that would have significant adverse cumulative impacts on coastal resources, as discussed further below, that do not advance LCP policies. Policy 5.4.3.G, in fact, acknowledges that past land use divisions may have resulted in parcels being unusable under current standards, and provides a remedy by stating that the reconstitution of parcels or mergers may be required in such cases.

Finally, the reconfiguration of sub-standard parcels that cannot safely accommodate residential development into new buildable parcels would cumulatively increase the level of residential



development in Big Sur well beyond that which is anticipated and allowed by the LCP. This will result in increased traffic on Highway One, which currently operates at the worst level of service (LOS F) at peak times, and would thereby interfere with the public's ability to access and recreate on the Big Sur Coast. Such an increase in residential development will also place greater demands on limited water supplies, which would, in turn, adversely impact riparian habitats. For example, the additional water use associated with the increase in residential development resulting from this lot line adjustment poses adverse impacts to the sensitive habitats of the Mule Creek watershed. Furthermore, increases in residential development potential (over and above that already contemplated in the LCP) throughout the planning area could alter the unique character of Big Sur that makes it such a popular destination for coastal access and recreation. Because of these cumulative impacts, the lot line adjustment raises a substantial issue of consistency with Big Sur LUP Policy 5.4.3.G.3, which provides for unbuildable lots to be merged where cumulative impacts on coastal resources require limitations on further development, as well as with Coastal Act Sections 30211 and 30213, which protect the public's right of access to the sea, and to lower cost visitor and recreational facilities, such as the many camping and hiking opportunities that make the Big Sur coast such a highly desirable destination for coastal recreation.

II. Recommended Motion and Resolution

MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-05-052 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-3-MCO-05-052 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Appeal Procedures:

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands,



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submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the first public road and the sea, and because a lot line adjustment is not designated as the principal permitted use.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a *de novo* review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the *de novo* stage of an appeal.

